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*[SEE SIGNATURE PAGE FOR ADDITIONAL
COUNSEL LISTING]*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

OPTIMUMPATH, L.L.C.,

Plaintiff,

vs.

BELKIN INTERNATIONAL, INC.,
BUFFALO TECHNOLOGY (USA), INC.,
CISCO-LINKSYS L.L.C., COMPEX INC.,
D-LINK SYSTEMS, INC., NETGEAR, INC.
and SMC NETWORKS, INC.,

Defendants.

CASE NO. 4:09-CV-1398-CW

**JOINT CASE MANAGEMENT
STATEMENT**

In accordance with the Court's Order of May 13, 2009 and Civil L.R. 16-9, Plaintiff
OptimumPath, L.L.C. ("OptimumPath" or "Plaintiff") together with Defendant Belkin
International, Inc. ("Belkin"), Defendant Buffalo Technology (USA), Inc. ("Buffalo"), Defendant
Cisco-Linksys LLC ("Cisco-Linksys"), Defendant Compex Inc. ("Compex"), Defendant D-Link

1 Systems, Inc. ("D-Link"), Defendant NETGEAR, Inc. ("NETGEAR"), and Defendant SMC
2 Networks, Inc. ("SMC Networks") (collectively "Defendants"), respectfully submit the following
3 Joint Case Management Statement in preparation for the July 14, 2009 Case Management
4 Conference. Counsel for the parties conducted a teleconference on July 1, 2009.

5
6 **1. Jurisdiction and Service**

7 This Court has jurisdiction over the subject matter of OptimumPath's claims of patent
8 infringement arising under the patent laws of the United States, including 35 U.S.C. §§ 271, 281.
9 This Court has exclusive jurisdiction over the subject matter of this action under 28 U.S.C.
10 § 1338(a). All of the Defendants have been served in this case.

11 This Court has jurisdiction over Defendants' counterclaims, which arise under the patent
12 laws of the United States, 35 U.S.C. § 1 *et seq*, and the Declaratory Judgment Act, 28 U.S.C.
13 §§ 2201-2202, pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

14
15 **2. Facts**

16 Plaintiff OptimumPath alleges that each of the Defendants infringes claim 1 of U.S. Patent
17 No. 7,035,281 ("the '281 patent") titled "Wireless provisioning device." The '281 patent, in
18 general, relates to wireless devices used in computer networks and telecommunications. Plaintiff
19 claims that Defendants infringe claim 1 by manufacturing and selling wireless routers
20 incorporating the technology disclosed and claimed in the '281 patent.

21 Defendants are providers of wireless routers for home and business applications.
22 Defendants deny that any products identified in Plaintiff's complaint infringe claims of the '281
23 patent and contend that the asserted claim is invalid and/or unenforceable.

24
25 **3. Legal Issues**

26 Plaintiff asserts that Defendants infringe claim 1 of the '281 patent in accordance with 35
27 U.S.C. § 271(a). Plaintiff also contends that it is entitled to damages in accordance with 35
28 U.S.C. § 284.

1 Defendants have asserted various affirmative defenses to OptimumPath's allegations of
2 patent infringement including non-infringement, invalidity and unenforceability. Defendants
3 Belkin, Cisco-Linksys, D-Link, NETGEAR and SMC Networks each counterclaim against
4 OptimumPath for a declaratory judgment that (1) they have not and are not now directly
5 infringing, contributorily infringing or inducing infringement of the '281 patent and/or (2) the '281
6 patent is invalid for failure to comply with the conditions and requirements of patentability set
7 forth in the patent statutes, including 35 U.S.C. §§ 101, 102, 103 and/or 112.

8
9 **4. Motions**

10 There are no pending motions. The parties anticipate the need for a protective order in this
11 case to govern the disclosure of confidential materials.

12 Defendants anticipate filing summary judgment motions of non-infringement and
13 invalidity.

14
15 **5. Amendment of Pleadings**

16 The parties do not anticipate adding any other parties at this time. The parties have agreed
17 to amend their pleadings by October 26, 2009, the date listed in the parties' proposed schedule, or
18 thereafter to seek leave of the Court to amend.

19
20 **6. Evidence Preservation**

21 The parties do not anticipate the need for a preservation order in this case. The parties
22 recognize that the burden of suspending normal policies regarding electronic backup systems for
23 disaster recovery outweighs the potential relevance of documents that might be captured by some
24 interim backup on an unknown date. Therefore, the parties agree that each party can continue the
25 standard disaster recovery systems protocol used by that party.

26 ///

27 ///

28 ///

1 **7. Disclosures**

2 The parties have not yet exchanged initial disclosures, but will do so on July 24, 2009, the
3 date listed in the parties' proposed schedule.

4
5 **8. Discovery**

6 The parties have not yet taken any discovery in this case.

7 Plaintiff anticipates taking discovery on issues related to liability and infringement,
8 including the design and operation of Defendants' accused products. Plaintiff also anticipates
9 taking discovery on damages issues, including sales of the accused products, as well as discovery
10 related to Defendants' affirmative defenses and counterclaims.

11 Defendants anticipate taking discovery on claim construction issues, the non-infringement,
12 invalidity and unenforceability of the '281 patent, issues related to the limitation of equitable relief
13 and damages.

14 The parties do not believe that additional limitations on discovery other than those set forth
15 in the Federal Rules of Civil Procedure are needed, but request the Court order that each 7 hours
16 of deposition, including depositions taken pursuant to Federal Rule of Civil Procedure 30(b)(6),
17 count as one deposition for the purposes of the presumptive limit under Federal Rule of Civil
18 Procedure 30(a)(2), with the following exceptions:

19 (1) Defendants will cooperate to take the deposition of the inventors, each of whom will be
20 available for up to 14 hours, each inventor counting as one deposition; and

21 (2) depositions of expert witnesses, who shall be available for 7 hours of deposition per
22 expert report submitted, will not be counted under Federal Rule of Civil Procedure
23 30(a)(2).

24 Defendants will confer in good faith to avoid deposing the same witness more than once in
25 his or her personal capacity. Plaintiff reserves its rights to object to more than one deposition of
26 the same witness.

1 The parties have also agreed that (1) drafts of expert reports will not be produced and (2)
2 that privileged communications occurring after the filing of the original complaint on January 30,
3 2008 need not be disclosed or described on any privilege log.

4 **9. Class Actions**

5 This is not a class action litigation.

6
7 **10. Related Cases**

8 There are no past or present cases related to the present litigation.

9
10 **11. Relief**

11 Plaintiff contends it is entitled to damages adequate to compensate it for the Defendants'
12 alleged infringement. In accordance with the patent laws, OptimumPath contends it is entitled to
13 at least a reasonable royalty for Defendants' alleged infringement of the claimed invention.

14 Defendants' prayers for relief include (1) that Plaintiff's Complaint be dismissed in its
15 entirety with prejudice; (2) an order that no damages or royalties are due or owed by Defendants
16 for any of the acts alleged by Plaintiff; (3) a declaratory judgment that the '281 patent has never
17 been, and is not now, directly infringed, contributorily infringed, or infringed by inducement by
18 Defendants anywhere in the United States; (4) a declaratory judgment that '281 patent is invalid;
19 (5) a declaratory judgment that the '281 patent is unenforceable; and (6) an order awarding
20 Defendants reasonable costs and its attorneys fees pursuant to 35 U.S.C. § 285.

21
22 **12. Settlement and ADR**

23 The parties have reviewed the ADR procedures in ADR L.R. 3-5, and have not agreed on
24 an appropriate form of ADR for this case. An ADR Phone Conference is scheduled for July 7,
25 2009 at 11:00 a.m.

26 Plaintiff believes that private mediation is the preferred form of ADR.

27 Defendants each request that the Court arrange a settlement conference with a Magistrate
28 Judge. Subject to the Court's convenience, Defendants will be further prepared to discuss at the

Case Management Conference particular Magistrate Judges in this district who may be available to conduct a settlement conference in this action.

13. Consent to Magistrate Judge for All Purposes

The parties do not consent to referral to a Magistrate Judge for proceedings in this case.

14. Other References

The parties do not believe that this case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues

Plaintiff is not currently aware of issues that can be narrowed by agreement or motion, suggestions to expedite the presentation of evidence at trial.

Defendants Belkin, Cisco-Linksys, D-Link and NETGEAR (but not Defendants Buffalo, Compex or SMC Networks) are requestors in a pending *inter partes* reexamination of the '281 patent. At this time Belkin, Cisco-Linksys, D-Link and NETGEAR are not aware of any issues before this Court affected by the reexamination proceeding.

16. Expedited Schedule

The parties do not believe that this case is appropriate for handling on an expedited basis with streamlined procedures.

17. Scheduling

The parties propose the following dates for scheduling in this case:

Event	Proposed Dates
Initial Disclosures	July 21, 2009
Disclosure of Asserted Claims and Infringement Contentions and accompanying document production [Pat. L.R. 3.1-3.2]	July 24, 2009

Event	Proposed Dates
Invalidity Contentions and accompanying document production [Pat. L.R. 3.3-3.4]	September 7, 2009
Exchange of Proposed Terms and Claim Elements for Construction [Pat. L.R. 4.1.a-b.]	September 17, 2009
Exchange of Preliminary Claim Constructions and Preliminary Identifications of Extrinsic Evidence [Pat. L.R. 4.2.a-b.]	October 7, 2009
Deadline to Amend Pleadings	October 26, 2009
Joint Claim Construction and Prehearing Chart [Pat. L.R. 4.3]	November 6, 2009
Completion of Claim Construction Discovery [Pat. L.R. 4.4]	December 7, 2009
Opening Claim Construction Brief [Pat. L.R. 4.5.a.]	December 18, 2009
Responsive Claim Construction Brief [Pat. L.R. 4.5.b]	January 8, 2010
Reply Claim Construction Brief [Pat. L.R. 4.5.c]	January 15, 2010
Claim Construction Hearing [Pat. L.R. 4.6]	February 2010, Subject to Court's availability
Disclosure of Advice of Counsel [Pat. L.R. 3.8]	July 9, 2010
Close of Fact Discovery	July 16, 2010
Designation of Expert Witnesses and Exchange of Initial Expert Reports for which party bears burden	August 20, 2010
Designation of Rebuttal Experts and exchange of Rebuttal Expert Reports	September 3, 2010
Close of Expert Discovery	October 8, 2010
Deadline to File any motion to limit or exclude Expert Testimony	October 21, 2010
Oppositions to Expert Motions Due	November 4, 2010
Replies ISO Expert Motions Due	November 11, 2010
Deadline to File Dispositive Motions	December 2, 2010
Oppositions to Dispositive Motions Due	December 16, 2010
Replies ISO Dispositive Motions Due	December 23, 2010
Parties to Exchange Civil L. R. 16-10(b) papers and proposed Motions in Limine	March 11, 2011

Event	Proposed Dates
Lead Counsel to Meet and Confer re: Pretrial Disclosures and Settlement	March 22, 2011
Parties to Submit Pretrial Materials and Motions in Limine	April 1, 2011
Oppositions to Motions in Limine Due	April 6, 2011
Suggested Date of Pretrial Conference	April 11, 2011 or thereafter, Subject to Court's availability

18. Trial

The parties have requested a jury trial. The parties believe that trial of this case can be completed in 10 trial days.

19. Disclosure of Non-Party Interested Entities or Persons

The parties have filed the appropriate certifications of interested parties.

20. Other Matters

The parties are not aware of any other matters to be addressed by the Court at the Case Management Conference other than those already expressed herein.

DATED: July 2, 2009

TERRA LAW, LLP

By /s

Breck E. Milde

Counsel for Plaintiff OptimumPath, L.L.C.

DATED: July 2, 2009

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By /s

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1 DATED: July 2, 2009

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13 DATED: July 2, 2009

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25 DATED: July 2, 2009

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I attest that Eric Benisek, Frank West and Bruce Brunda have authorized me to sign
electronically this document on their behalf.

Dated: July 2, 2009

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By: /s

Carl. G. Anderson